

69800



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*Wm J. O'Brien
Civ. Serv.*

FEB 23 1977

FILE:

B-187344

DATE:

MATTER OF:

**William J. O'Brien - Actual subsistence expenses -
High rate area - Constructive travel**

DIGEST:

1. Employee was assigned to temporary duty at Indianapolis, Indiana, and then at Chicago, Illinois. Although he stayed in Chicago on his first night of travel, he may not be reimbursed for actual subsistence expenses in high-rate geographical area for first night, since constructive travel schedule placed him in Indianapolis for that night.
2. Employee, assigned to temporary duty, was placed in constructive travel on per diem for first day of travel. FTR para. 1-8.2c(2) (May 19, 1975) provides that reimbursement for day of return to home shall be same as for first day. Since he constructively spent first day in per diem status, employee may only be paid per diem for day of return, even though he returned from high rate geographical area.
3. Employee on temporary duty obtained lodgings at double occupancy rates. Since same accommodations would have been obtained had he not been accompanied, employee, who is eligible for reimbursement for self only, may be reimbursed at single occupancy rate rather than at one-half of double occupancy rate.
4. Employee, assigned to temporary duty in Chicago, obtained suburban lodgings. Since employee was authorized rental car, use of taxicab between airport and lodgings, and of commuter train may have been advantageous to the Government. Employee may thus be

B-187344

reimbursed train fares to extent they do not exceed cost of rental car for local travel in Chicago, and may be reimbursed taxicab fares to extent they do not exceed cost of rental car for transportation between airport and Chicago.

This action is in response to a request dated August 30, 1976, from Mr. John P. Kratzke, the acting managing director of the Interstate Commerce Commission (ICC), for a decision concerning the voucher of Mr. William J. O'Brien, an ICC employee, for certain transportation expenses incurred incident to the performance of temporary duty.

Mr. O'Brien, an administrative law judge with the ICC, was assigned to preside over hearings at Indianapolis, Indiana, on May 10, 1976, and at Chicago, Illinois, from May 11 through May 21, 1976. Pursuant to a blanket travel authorization, Judge O'Brien traveled from his permanent station at Washington, D.C., to Highwood, Illinois, a suburb of Chicago, on May 9, 1976. After traveling from Highwood to the hearing at Indianapolis on May 10, 1976, Judge O'Brien returned to Highwood from whence on May 11 through May 21 he commuted by train to his temporary duty station in Chicago. At the conclusion of the temporary duty, he traveled on May 21, 1976, from Highwood to Washington, D.C. By reason of lodging in Highwood, Judge O'Brien incurred suburban train fares in the total amount of \$20.40, and cab fares to and from the airport in the total amount of \$56 (4 trips at \$14 each).

Mr. O'Brien submitted a travel voucher claiming reimbursement for this period in the total amount of \$675.40. The Budget and Fiscal Office of the ICC issued a statement of differences which only allowed reimbursement based on constructive air travel from Washington, D.C., to Indianapolis and return via Chicago. Mr. O'Brien's per diem for May 9, 1976, was computed on constructive departure from Washington in the afternoon of that date. He was not allowed suburban train fares to and from Chicago in the absence of administrative approval and in the absence of an acceptable statement

B-187344

on his voucher for obtaining lodging in Highwood, Illinois. Instead, constructive limousine and cab fares were allowed based on lodging in Chicago. Per diem instead of actual subsistence was allowed on May 9 and May 21, 1976. Actual subsistence, not to exceed \$39, was allowed for the period May 10 through May 20, 1976. The above computation resulted in decreasing Judge O'Brien's transportation expenses by \$39, his subsistence by \$36.75, cab fares by \$41, and suburban train fares by \$20.40. The total suspension was \$137.15.

Judge O'Brien subsequently submitted a revised travel voucher in the amount of \$627.90, reflecting constructive travel from Washington, D.C., to Chicago via Indianapolis. In a memorandum dated July 1, 1976, to the ICC budget and fiscal officer, Mr. O'Brien, citing ICC regulations, reclaimed the following items: actual subsistence on May 9, 1976, taxicab fares from O'Hare airport to Highwood on May 9 and 21, 1976, and the suburban train fares between Highwood and Chicago.

With respect to his claim for actual expenses on May 9 and 21, 1976, as set forth on the reclaim travel voucher, Judge O'Brien relies on ICC provisions which are identical to paragraph 1-5.2c(1) of the Federal Travel Regulations (FTR Temp. Reg. A-11) (May 19, 1975). It provides that, in instances of mixed travel involving both per diem and actual subsistence expenses, the method of reimbursement shall be determined by the location where lodgings are obtained for the day.

For the first day of travel, May 9, 1976, the constructive travel for Judge O'Brien places him in Indianapolis on that date and for the portion of May 10, 1976, during which he performed temporary duty in that city. Since Indianapolis is not one of the high-rate geographical areas listed in FTR para. 1-5.6 (May 19, 1975), Judge O'Brien is not entitled to reimbursement of actual expenses for May 9, 1976. He is entitled to per diem for that day, as administratively allowed.

With respect to travel on May 21, 1976, the date on which Judge O'Brien returned to his home, FTR para. 1-5.2c(2) (May 19, 1975) provides as follows:

Reimbursement for day of return. The method of reimbursement for the day of return to home or official station (where lodgings are not involved)

B-137344

shall be the same method of reimbursement authorized for the first day of travel. For example, if a traveler is authorized actual subsistence expense reimbursement for the first day of travel, reimbursement for the day of return to home or official station shall also be on an actual subsistence expense basis; if per diem is authorized for the first day of travel, per diem shall also be authorized for the day of return to home or official station."

Since per diem reimbursement was properly authorized for Judge O'Brien's travel to Indianapolis on the first day of travel, he may be reimbursed only for per diem on the last day, May 21, 1976, and not for actual expenses. In that connection, where a trip involves one or more days and a fractional day, the per diem rate established under FTR para. 1-7.3c(1) (May 19, 1975) may be used for the entire period of travel for which per diem is appropriate because the FTR does not require a second rate to be obtained for the remaining fractional day of a trip on which lodging was not required. B-174683, January 12, 1972; B-178878, August 27, 1973. Accordingly, Judge O'Brien may be allowed 3/4 of the \$33 per diem allowance, or \$24.75 as administratively allowed.

The motel receipts accompanying this voucher indicate that for the entire time during which Judge O'Brien claims reimbursement of lodging expenses at Highwood two persons occupied the motel room. Judge O'Brien is entitled to reimbursement of only his own actual expenses and he would have used the same accommodations had he not been accompanied. We have previously held that if a claimant would have used the same accommodation at the single occupancy rate had he not been accompanied, he may be reimbursed on the basis of such single occupancy rate rather than at one-half of the double occupancy rate. B-116908, October 12, 1965. Accordingly, for the period from May 10 through 14, 1976, and from May 16 through 20, 1976, reimbursement may be made only at the single occupancy rate, which is \$13.90 per day. For May 15, 1976, while occupying a room at the Pfister Hotel and Tower in Milwaukee, Judge O'Brien may be reimbursed at the single occupancy rate.

Judge O'Brien has also reclaimed taxicab fares incurred on May 9 and 21, 1976, in the amount of \$28 for transportation between O'Hare airport and Highwood. This expense has been justified

B-187344

by Mr. O'Brien as necessary because there was no limousine service between the airport and his place of lodging. In addition, he has reclaimed \$20.40 for fares incurred in traveling the Chicago and Northwestern commuter train between his place of lodging and the temporary duty station. The total amount thus reclaimed is \$48.40. The suburban train fares were administratively disallowed as unauthorized and the taxicab fares were allowed only in the amount of \$10, representing the limousine fare from O'Hare airport to Chicago.

Concerning reimbursement of local transportation expenses, the Federal Travel Regulations (May 1973) provide in pertinent part as follows:

"1-1.3a. Employee's obligation. An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

* * * * *

"1-2.3. Local transportation.

"a. To, from, and between places of work. Transportation by bus or streetcar between places of business at an official station or a temporary duty station and between places of lodging and place of business at a temporary duty station is allowed as a transportation expense. (Concerning transportation by taxicab between such places, see 1-3.1.)

* * * * *

"c. To and from carrier terminals. Reimbursement will be allowed for the usual taxicab and airport limousine fares, plus tip, from common carrier or other terminal to either the employee's home or place of business, from the employee's home or place of business to common carrier or other terminal, or between an airport and airport limousine terminal. However, an agency shall, when appropriate, restrict the use of taxicabs hereunder or place a monetary limit on the amount of taxicab reimbursement when suitable Government or common carrier transportation service, including airport limousine service, is available for all or a part of the distance involved."

B-197344

FTR paragraph 1-2.3 contemplates that a traveler will ordinarily lodge in close proximity to the temporary duty station. We have held, however, that when an employee, assigned to temporary duty at a high cost area, effects an overall savings in travel expenses by obtaining lower cost lodgings and subsistence in a suburban location, the additional transportation costs incurred by commuting from the suburb may be reimbursed in an amount not to exceed the expenses to which he would have been entitled had he obtained lodgings in the high cost area. B-170558, June 20, 1973. Since Judge O'Brien was reimbursed at the maximum allowance for his actual subsistence expenses in Highwood, his travel from Highwood to Chicago was not prudently incurred. Thus, in the ordinary case, there would be no authority to reimburse him for costs other than the constructive cost of local travel and transportation between the airport and the temporary duty station.

In the case before us, however, Judge O'Brien was authorized use of a "rent-a-car." It therefore appears that under FTR para. 1-2.2c(1) (May 19, 1975) it could be determined that his use of common carrier transportation instead of a rental vehicle was advantageous to the Government. Thus, to the extent that the claimed suburban train fares do not exceed the constructive daily cost of a rental vehicle for travel in Chicago, the claimed train fares may be reimbursed. See 55 Comp. Gen. 192, 196 (1975).

With respect to the taxicab fares claimed by Judge O'Brien, we noted above that such fares may be reimbursed pursuant to FTR para. 1-2.3c (May 1973) for travel between the carrier terminal and the temporary duty station. Although travel to Highwood was not prudent in this case, Judge O'Brien was authorized use of a rental car, and, therefore, the use of taxicabs, as authorized by FTR para. 1-2.3c may be considered advantageous to the Government. Reimbursement, then, of the claimed taxicab fares may be made, to the extent that they do not exceed the constructive cost of a rental car for transportation between O'Hare airport and Chicago.

In reviewing Judge O'Brien's claim, we note that the claimed expenses for meals appear excessive. For the period during which he was eligible for actual expenses reimbursement, Mr. O'Brien's daily expenses for meals averaged \$21.83, from a low of \$18.44 to a high of \$25.54. In the absence of any objection by the agency to the meal costs, we will not take exception. However, we suggest

B-187344

that the employing agency should, pursuant to its authority under FTR para. 1-8.3b, issue written guidelines to serve as a basis for review of such expenses. In this connection, the Comptroller General has promulgated at para. 3d, of Part III, of Chapter 4 of GAO Order 0300.1 (March 24, 1976) the following standard for travel performed on behalf of the General Accounting Office:

"d. When traveling to high-rate geographical areas, regardless of whether lodging costs were incurred, the maximum amount normally allowed for subsistence expenses (other than lodging) shall be limited to \$17. If unusual circumstances occur whereby this amount does not cover the allowable costs incurred, the traveler's normal approving official, upon receiving adequate justification for the abnormal expense, may approve more than \$17 for subsistence expenses (other than lodging). The expenses included in this maximum are those same expenses which the General Services Administration has determined are allowable under a per diem basis. (See FPMR 101-7, paragraph 1-7.1b.)

NOTE: Items of a personal nature such as snacks, newspapers, long-distance telephone calls, and alcoholic beverages, are NOT reimbursable."

The employing agency may consider the adoption of similar guidelines.

Accordingly, action on the voucher should be taken in accordance with the above.

R. F. KELLER

Acting Comptroller General
of the United States